

United States Court of Appeals for the Fifth Circuit

No. 20-50480
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 9, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JESSE RAY HARDEE,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:19-CR-265-1

Before JOLLY, HAYNES, and GRAVES, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.



Certified as a true copy and issued
as the mandate on Mar 03, 2021

Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

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Appeal from the United States District Court
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USDC No. 7:19-CR-265-1

Before JOLLY, ELROD, and GRAVES, *Circuit Judges*.

PER CURIAM:*

Jesse Ray Hardee appeals his 365-month, within-guidelines sentence for conspiring to possess with intent to distribute 50 grams or more of methamphetamine. He contends that the district court miscalculated the quantity of drugs for which he was responsible in determining his guidelines

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-50480

range. We review the district court's drug-quantity calculation for clear error. *See United States v. Eustice*, 952 F.3d 686, 690 (5th Cir.), *cert. denied*, 141 S. Ct. 433 (2020).

Although Hardee contends that the calculation was undermined by the testimony of his mother at sentencing, the district court found that she lacked credibility, and we will not disturb that determination. *See United States v. Goncalves*, 613 F.3d 601, 609 (5th Cir. 2010). Hardee's bald contention that the district court improperly relied upon the presentence report lacks merit. *See Eustice*, 952 F.3d at 691. Finally, because Hardee challenges his guidelines range, not a mandatory minimum sentence, his reliance upon *United States v. Haines*, 803 F.3d 713, 740 (5th Cir. 2015), is misplaced. *See United States v. Bowen*, 818 F.3d 179, 192 n.8 (5th Cir. 2016). Hardee fails to show any, much less clear, error. *See Eustice*, 952 F.3d at 690-91.

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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March 03, 2021

Ms. Jeannette Clack
Western District of Texas, Midland
United States District Court
200 E. Wall Street
Room 222
Midland, TX 79701-0000

No. 20-50480 USA v. Hardee
USDC No. 7:19-CR-265-1

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: _____
Lisa E. Ferrara, Deputy Clerk
504-310-7675

cc:

Ms. Elizabeth Berenguer
Mr. Joseph H. Gay Jr.
Mr. Jesse Ray Hardee